IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 14 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME TAX

Versus

CHOKHAWALA ENTERPRISES

Appearance:

1. INCOME TAX REFERENCE No. 14 of 1995

MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 26/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for our opinion in respect of assessment years 1976-77 to 1979-80:-

(i) Whether, on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that the Assessments reopened u/s.147(a) are not correct when it is a fact that the assessee had not declared its correct income by not declaring property income in the returns of income filed, though in absence of registered sale deeds executed in favour of prospective buyers, he was the legal owner of the property?

(ii) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that the notional property income taxed u/s.22 of the Act treating the assessee as legal owner by the ITO is not correct when it is a fact that the assessee had not executed any registered sale deeds in favour of prospective buyers of flats/shops etc.?

2. We have heard Mr MR Bhatt, learned Senior Standing Counsel for the revenue. Though served, none appears for the respondent - assessee.

3. For the sake of convenience, we will first take up question No.2 as identical question was referred for our opinion in the case of this very assessee in respect of assessment years 1980-81 to 1983-84.

In view of the decision of the Hon'ble Supreme court in CIT vs. Podar Cement Pvt. Ltd., 226 ITR 625, we have answered the similar question in the said reference in the affirmative i.e. in favour of the assessee and against the revenue by holding that the persons who were put in possession of the flats/shops on the assessee receiving full consideration were required to be treated as owners of the flats/shops and, therefore, the order of the Assessing Officer by taking notional property income in the hands of the assessee under Section 22 of the Act by treating the assessee as a legal owner was not correct.

Following the aforesaid decision of the Hon'ble Supreme Court and our decision in the case of this very assessee in ITR No.23 of 1994 decided today, we answer question No.2 in the affirmative i.e. in favour of the

assessee and against the revenue.

4. Coming to question No.1., in view of our answer to question No.2 as aforesaid, question No.1 is academic and, therefore, it is not necessary to answer the same. We accordingly decline to answer question No.1.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-